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JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 1128

OCTOBER TERM, 1969

FIFI BELONDON, *Petitioner*

v.

CITY OF CASPER, *Respondent*

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INDEX

	Page
CITATION	1
JURISDICTION	1
QUESTIONS FOR REVIEW	2
ARGUMENT	2
CONCLUSION	4

CASES CITED

Abel v. United States,
80 S. Ct. 683 4

Belondin v. City,
456 P.2d 238 ..... 1, 3, 5

Shoemaker v. State,
444 P.2d 309, ... 4

State v. Hickenbottom,
178 P.2d 119, ... 4

Waxler v. State,
224 P.2d 514, ... 4

Wiggins v. State,
206 P. 373, ... 5

OTHER AUTHORITIES

Rule 19 1 (b) Rules of the Supreme Court of the United States 3, 4, 7

Title 28 U.S.C., Sec. 1257 ..... 1, 4, 7

BRIEF IN OPPOSITION
TO
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CITATION

A. Respondent respectfully submits that the three cases which are the subject of Petitioner's Petition for Writ of Certiorari are contained in the official reports of the State of Wyoming, as follows: FIFI BELONDON, Appellant (Defendant below), v. CITY OF CASPER Appellee (Plaintiff below). Wyo. *456 P. 2d 238.*

JURISDICTION

B. The Respondent respectfully submits that the Petitioner does not have the right to invoke the jurisdiction of this court for the reason that this matter does not fall within the specific restrictive terms of Section 1257 of Title 28, United States Code, providing for certiorari from an Order of the highest court of any one of the States, in that the validity of a treaty or statute of the United States is not drawn into question nor is the validity of a statute of the State of Wyoming drawn into question on the ground of its being repugnant to the Constitution, treaties and laws of the United States, nor can there be any title, right, privilege or immunity specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States. Here it should be noted that the Petitioner does not contend that the various sections of the Casper City Code enumerated in Paragraph D. of the Petition are repugnant

to the Constitution of the United States. Nowhere in the Petition is there any mention of the invalidity of these particular sections.

QUESTIONS FOR REVIEW

C. Respondent respectfully disagrees with the questions presented for Review contained in similarly numbered Paragraph C. of the Petition, in the following respects:

1. Petitioner's first sentence is erroneous in that no evidence in the form of an exhibit was introduced in Case No. 5505 or 5507. The evidence to which Petitioner makes reference was introduced in Case No. 5506, and will be discussed in the evidence hereinafter set out.

2. The record will disclose that the officer spoken of in Paragraph 2 of Paragraph C. of the Petition was present only during the transactions being the subject of Case No. 5506 and was not present during the transactions which were the subject of Case No. 5505 and Case No. 5507.

D. Respondent does not disagree with the statements contained in Paragraph D. of the Petition.

ARGUMENT

E. Respondent disagrees with the statements contained in Paragraph E. of the Petition, in the following respects: Examination of the record to be presented in this matter would indicate to the Court that the warrants were originally issued in the name of Fifi Belondon and not in the name of Jane Doe and that the warrants were not subsequently changed as to the defend-

ant's name. Further, Respondent disagrees with the statements in the Petition concerning the search and seizure of evidence, and respectfully submits that examination of the record will show that the evidence therein spoken of was subsequently removed from a small bedroom to which the door was closed at the time the arresting officer and complaining witness made the arrest of this defendant in Case No. 5506. Further, Respondent disagrees with the statements of the Petitioner having to do with a police officer being present at the time the defendant was speaking on the telephone with her attorney in that the record would show that this particular officer was not present on these premises at the time the arrest was made in Cases 5505 and 5506. The Petition for Writ of Certiorari should be denied on the ground and for the reason that the Petition does not fall within the strict requirements of Section 1 (b) of Rule 19 of the Rules of the Supreme Court of the United States, in that the Supreme Court of the State of Wyoming has not departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower Court, and, therefore, this Court's supervisory powers may not, in this instance, be called upon. Nor has the Supreme Court of the State of Wyoming failed to follow the guidelines set up by this Court.

(1) Petitioner makes objection to the multiplicity of possibilities resulting from the disjunctive charge contained in the Complaint. The Supreme Court of the State of Wyoming addressed itself specifically to this question in this particular case wherein, at page 243 of *Wyo. 456 P. 2d*, they had this to say:

"[14, 15] Our attention has not been called to any timely objections made to the form of the complaint. The kind of objections now made for defendant should have been made prior to her plea of not guilty, and certainly before a jury was impaneled. Defects in the complaint such as appellant now asserts, if they were in fact defects, are waived if not excepted to by proper motion or pleading prior to defendant's plea of not guilty. Section 7-188, W.S. 1957; *Waxler v. State, 67 Wyo. 396, 224 P. 2d 514, 517-518; State v. Hickenbottom, 63 Wyo. 41, 178 P. 2d 119, 124-125.*

Additionally, we recently reaffirmed in *Shoemaker v. State, Wyo. 444 P.2d 309, 310* (where the charge was in the disjunctive), that a charge in the words of the statute is sufficient. Belondon was charged in the words of an ordinance."

The conclusion of the Supreme Court of the State of Wyoming is supported by the decision of this Court in the case of *Abel vs. United States 80 S. Ct. 683.* Therefore, Respondent respectfully submits that this contention of the Petitioner does not fall within the terms and provisions of Section 1257 of Title 28, United States Code, nor within the provisions of Rule 19 1 (b), Rules for the Supreme Court of the United States.

(2) Respondent further disagrees with sub-paragraph 2 of Paragraph F. of the Petition, in that the Record will show that the evidence seized was seized from the particular room in which the arrest of this defendant took place. Counsel for the Petitioner would further ask that in the conduct fo this matter, that the Po-

lice Department of the City of Casper, the Municipal Court of the City of Casper, the District Court of the State of Wyoming and the Supreme Court of the State of Wyoming be governed by the *Chimel* Rule (*Ted Steven Chimel vs. State of California.....U. S....., 23 L. ed. 2d 685, 89 S. Ct.....*). Respondent would direct the Court's attention to the fact that this particular matter had proceeded to the point where the opinion of the Supreme Court of the State of Wyoming was entered June 27, 1969, while the *Chimel* case was decided by this Court June 23, 1969, and at that time remained unpublished. Again, the Supreme Court of the State of Wyoming in its opinion, (*Wyo., 456 P.2d 238,* at page *241*) addressed itself specifically to this question and said:

> "The principle that officers have the right to make such a search as was made in this case was recognized in the earlier case of *Wiggin v. State, 28 Wyo. 480, 206 P. 373, 376.* There Justice Blume stated:
>
> > 'The law is well settled that an officer has the right to search the party arrested and take from his person and from his possession property reasonably believed to be connected with the crime * * *.'
>
> "With respect to what is meant by "possession" in this connection, Justice Blume went on to say, *206 P. at 377,* where property of evidentiary value is at a place to which lawful access has been obtained, the officer may upon the lawful arrest of defendant seize and take the property into his possession."

Therefore, the Respondent would respectfully submit that prior to the publication of the *Chimel* Rule, the law concerning search and seizure within the State of Wyoming was as set forth immediately hereinabove, for which reason Petitioner's contention contained in the second sub-paragraph of Paragraph F. of the Petition is unwarranted. Furthermore, the specific evidence which is here complained of was submitted to the Court only in Case No. 5506 and not in the other two cases.

(3) For several reasons, the Respondent feels that Petitioner's statements contained in sub-paragraph 3 of Paragraph F. of the Petition are without merit. The officer therein mentioned was present only in connection with the arrest which is the basis of Case No. 5506, and not present incident to the arrest which was the subject of Cases 5505 and 5507. Respondent concedes that a defendant or person under arrest has a constitutional right to consult her attorney. This right was afforded this defendant in that she was permitted to telephone an attorney for whatever purpose she might deem justified. The fact that a police officer was present in the room during the making of this telephone call does not abridge this right. Nor does it affect the assistance which she could have obtained from counsel by telephone for the reason that the police officer could not hear what advice or assistance was rendered to her by the person, supposedly an attorney, with whom she was speaking. For these reasons, Respondent respectfully submits that Petitioner's third sub-paragraph is without merit.

(4) In answer to the contentions of Petitioner's fourth sub-paragraph, Respondent admits that the Pe-

titioner has exhausted her remedies in the courts of the State of Wyoming by the denial of her Petition for Rehearing by the Supreme Court of the State of Wyoming. However, the Supreme Court of the State of Wyoming has not decided important questions in a way which conflict with decisions of this Court in that the *Chimel* Rule was not published at the time of the Wyoming Court's decision. Therefore, Respondent respectfully submits that the facts of the instant matter do not fall within the strict provisions of Title 28, United States Code, Section 1257, nor Rule 19 1 (b) of the Rules of the Supreme Court of the United States.

CONCLUSION

For the reasons hereinabove set forth, Respondent respectfully submits that the Petition for Writ of Certiorari should be denied by this Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that he served the within and foregoing Brief In Opposition to Petition For Writ Of Certiorari upon counsel of record for the Petitioner, by depositing in the United States Post Office, postage prepaid, one copy thereof, addressed, as follows:

RAYMOND B. WHITAKER, ESQUIRE
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and by depositing in the United States Post Office, air mail postage prepaid, one copy thereof, addressed as follows:

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This certificate is made in compliance with the requirements of Rule 33 of the Rules of the Supreme Court of the United States.

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